

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

|   |   |                              |
|---|---|------------------------------|
| JOHN COREY FRASER, et al., on behalf of         | ) |                              |
| themselves and all others similarly situated as | ) |                              |
| a Class,  | ) |                              |
|   | ) |                              |
| Plaintiffs,                                     | ) |                              |
|   | ) |                              |
| v.  | ) | Civil Action No. 3:22CV00410 |
|   | ) |                              |
| BUREAU OF ALCOHOL, TOBACCO,                     | ) |                              |
| FIREARMS, AND EXPLOSIVES, et al.,               | ) |                              |
|   | ) |                              |
| Defendants.                                     | ) |                              |
|   | ) |                              |

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**DEFENDANTS’ MOTION TO DISMISS PLAINTIFFS’ FIRST AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); Steven Dettelbach, in his official capacity as the Director of ATF; and Merrick Garland, in his official capacity as Attorney General of the United States (hereinafter Defendants)<sup>1</sup> respectfully move this Court to dismiss Plaintiffs’ First Amended Complaint for lack of subject matter jurisdiction and for failure to state a claim on which relief can be granted. In accordance with the

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<sup>1</sup> The First Amended Complaint also appears to raise claims against Director Dettelbach and Attorney General Garland in their individual capacities. The undersigned counsel represents only the agencies of the United States and federal officers sued in their official capacities. The undersigned counsel does not represent officers sued in their individual capacities, and this motion is submitted only on behalf of ATF and federal officers sued in their official capacities. For simplicity, this motion uses the term “Defendants” to refer to this group of defendants, excluding Defendants Dettelbach and Garland in their individual capacities. To undersigned counsel’s knowledge, Plaintiffs have not served Director Dettelbach and Attorney General Garland in their individual capacities in accordance with Federal Rule of Civil Procedure 4(i)(3); those individuals would have sixty days after the completion of service in which to file a response to the First Amended Complaint under Federal Rule of Civil Procedure 12(a)(3). In any event, many of the arguments advanced in support of this motion would also be applicable to those defendants and support dismissal of the First Amended Complaint in its entirety. Moreover, because the First Amended Complaint fails to identify any decisions or actions personally taken by Attorney General Garland or Director Dettelbach, Plaintiffs’ *Bivens* claims are facially defective. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (“Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*.”); *Trulock v. Freeh*, 275 F.3d 391, 402 (4th Cir. 2001) (there is no *respondeat superior* liability in a *Bivens* suit).

Court's Local Rules, this motion is accompanied by a memorandum in support of the motion and citations of the authorities on which Defendants rely.

Dated: November 30, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of November, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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